IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 1506 of 2001(C)

OPMV648/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT - THIRD RESPONDENT:

M/S. UNITED INDIA INSURANCE CO. LTD.,
MAIN ROAD, MANNARKKAD, NOW REPRESENTED
BY ITS ASSISTANT MANAGER, MTPCO,
M.G. ROAD, KOCHI - 16.

BY ADV. SRI.P.JAYASANKAR

RESPONDENTS - PETITIONER - RESPONDENTS:
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1. P. ASHARAF, AGED 19 YEARS, S/O. KHADEEJA,
PUNCHAYIL VEEDU, P.O. THRIKKALUR,
KALLANKUZHI, POTTASSERI, MANNARKKAD.

2. ABDULLA, AGED 30 YEARS, S/O. ALIMGAMU @
ALIMUHAMMED, PATHARAMUNDA,
MACHANTHODU P.O., MANNARKKAD.

3. M. ABDUL LALTHEEF, AGED 40 YEARS,
S/O. MAMMUNNI, KOLAMPAN VEEDU,
NELLIPUZHA P.O., MANNARKKAD.

BY ADV. SRI.C.RAGHAVAN
SRI.M.V.HARIDAS MENON
SRI.B.JAYASANKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1506 OF 2001

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Dated this the 4th day of December, 2007

J U D G M E N T

Third respondent-Insurer in O.P(MV) No.648 of 1997 on the file of the Motor Accidents Claims Tribunal, Ottapalam, is the appellant. Appeal is filed against the award passed by the Tribunal by which the petitioner, first respondent herein, was awarded a sum of Rs.38,100/- as compensation with 9% interest. Appellant was directed to satisfy the award. Challenging that award, this appeal is filed.

2. I have carefully gone through the findings of the Tribunal regarding negligence as well as the quantum of compensation awarded. Tribunal had considered these aspects in detail and found that the accident occurred due to the negligence of the second respondent, driver of the Jeep. It is a finding of fact based on good evidence. The Tribunal, after considering the entire evidence, awarded a compensation of Rs.38,100/-. I do not find any reason to interfere with the findings of the Tribunal regarding negligence and quantum of compensation.

3. Appellant admitted the existence of a valid policy, but contended that there was violation of policy conditions. It was contended that vehicle was insured as a private vehicle, but on the date of accident, the vehicle was being used as a taxi and as such the appellant is not liable to indemnify the insured.

4. The Tribunal found that there is no evidence to hold that the vehicle was used as a taxi at the time of accident. Learned counsel appearing for the appellant has argued that in Exhibit A1 FIR itself it was stated that the accident occurred at a time when the vehicle was used as taxi. Exhibit A7 is the copy of the final report filed by the police after investigation. Appellant produced a copy of the final report, which is marked as Exhibit B2. It is argued that in Exhibits A1 and A7 also it was very specifically stated that the vehicle was being used as a taxi. It is true that no oral evidence was adduced to prove the documents. The documents produced show that the view taken by the Tribunal that there was no material on record to hold that vehicle was used as a taxi is not fully correct. But considering the entire aspects, I am of the view that it is only just and proper that the appellant be given an opportunity to

establish that there was violation of policy conditions, etc. For that purpose, the case has to back.

5. In the result, appeal is allowed in part. The findings of the Tribunal that the accident occurred due to the negligence of the second respondent, driver of the Jeep and the petitioner is entitled to a compensation of Rs.38,100/- with 9% interest from the date of petition till date of realisation are confirmed. The finding of the Tribunal that there was no violation of policy conditions alone is set aside and the case is remanded to the Tribunal for re-consideration of that point alone. Tribunal is directed to re-consider that issue and dispose of the case in accordance with law, after affording an opportunity to both sides to adduce evidence, if so advised.

6. Parties are directed to appear before the Motor Accidents Claims Tribunal, Ottapalam on 23.1.2008.

Civil Miscellaneous Petition No.9722 of 2001 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1506 OF 2001

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J U D G M E N T

4TH DECEMBER, 2007